Office Supreme Court U. S.
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NOV 19 1901
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Reply Brief of Sanders

IN THE

SUPREME COURT

Filed Nov. 19, 1901.

OF THE UNITED STATES.

October Term, A. D. 1901.

HARRIETT M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Reply Brief in Support of Application for Writ of Certiorari.

No. 344.

REPLY BRIEF TO DEFENDANT'S BRIEF.

GEORGE A. SANDERS,
Attorney for Petitioner.

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REPLY BRIEF OF PETITIONER.

Under head II, page 20, and following of defendant's brief to page 24, counsel strenuously insists that the bonds in controversy were *void upon their face* when issued, being, as he claims, prohibited by the Constitution of July 2, 1870.

That therefore there could be no *bona fide* holding of the bonds, and that there was no *then existing law* when the vote was taken, Nov 3, 1868, for subscription to the stock of the

railroad company in payment of which the bonds were issued. But this position is entirely untenable, both as to the law and the facts on the question.

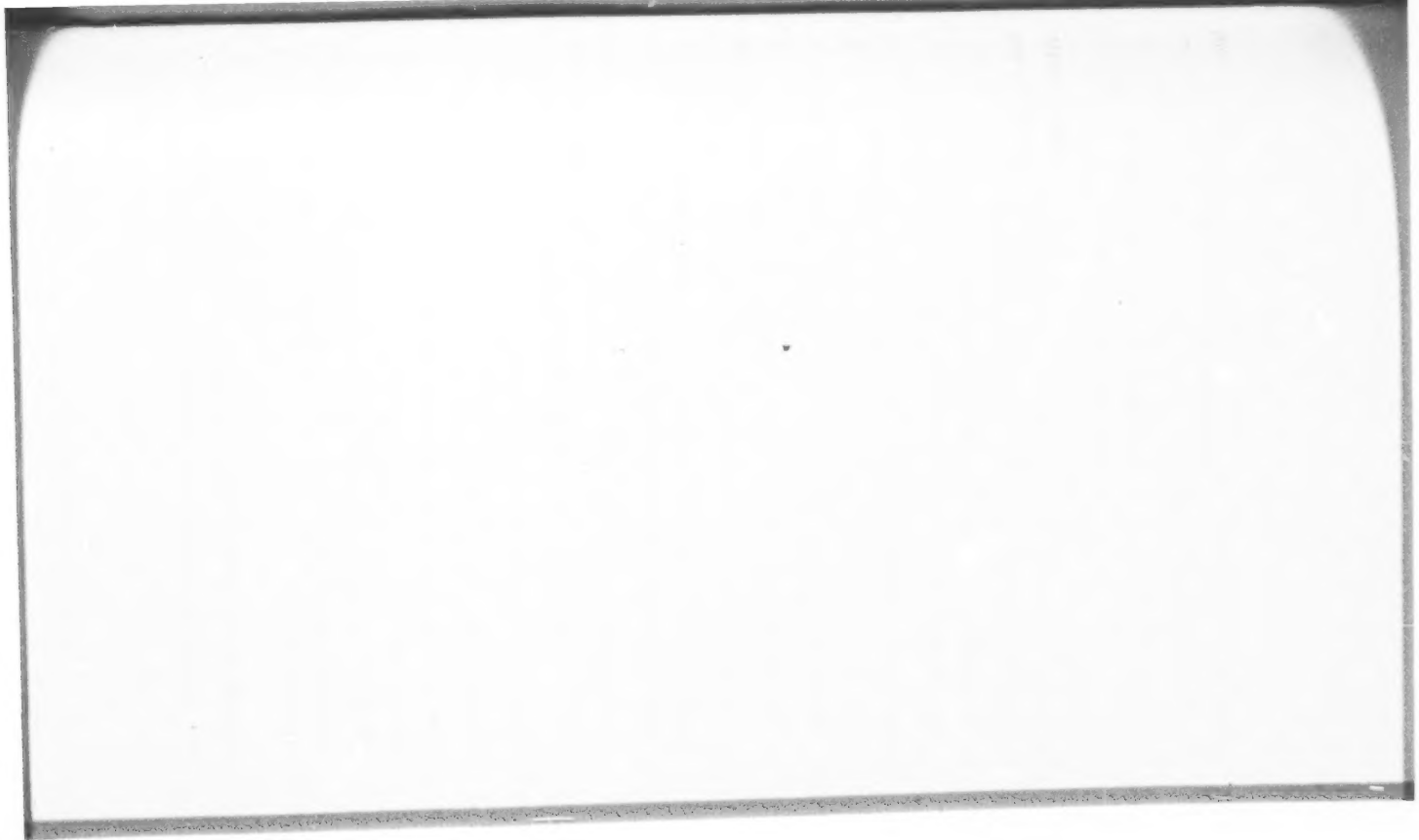
The vote was taken *Nov. 3, 1868.* The act incorporating the St. Louis and South Eastern Railroad Company, to which the bonds were issued, was passed March 10th, 1869. The present State Constitution went into effect July 2, 1870, and the bonds in question were dated Oct. 23 and Nov. 28, 1871.

It is primary law, that all Acts of the legislature and of Congress, are *deemed constitutional and effective, until held void by a court of competent jurisdiction.*

The Acts of the people by their vote of Nov. 3d, 1868, and the county officials in the issuing of the bonds in 1871, under the Act of March 10th, 1869, *must be held lawful and valid until* the act of incorporation of the railroad company of March 10th, 1869, was declared unconstitutional by a court of competent jurisdiction.

For some *ten years* neither the acts of the county defendant in the issue of these bonds, nor the constitutionality of the act of the legislature under which they were issued was ever called in question, and the interest was regularly levied, collected and paid.

In *June, 1881,* a most excellent Judge, S. B. Treat, of the Federal Circuit Court of this district, in a decree of that date, held 105 of the 200 bonds of this issue *valid obligations* of the defendant county, and the act of incorporation of



the railroad company under which they were issued *not repugnant* to either the constitution of 1848, or that of 1870.

This was a severely contested case, as it originated in the State Circuit Court, and was removed to the Federal Court, where one Jackson, *owner of 105 of these bonds, filed his cross bill*, naming his bonds by number, which were held valid in the decree, and the bill of the complainants was dismissed at their cost. This decree was never appealed from, and in due time Jackson's bonds and interest were paid in full.

The contention then as now, was as to the constitutionality of the Act of March 10th, 1869, under which the bonds were issued. There has never been any other question raised as to irregularity or informality in the issue of the bonds.

These bonds were therefore *valid* in accordance with the terms on their face, under the decree of the United States Circuit Court, *until some 18 years after their issue*, when the State Supreme Court in an *ex parte* case of Hamill, June 16, 1888, 134 Ill. 656, held the whole issue of $200,000 void, because, as they claimed, the Act of March, 1869, was repugnant to the constitution by reason of its title. Can it be possible that defendant's counsel is serious in strenuously insisting that *there was no law in existence* when the vote of Nov. 3, 1868, was taken, under a law which was held constitutional in Judge Treat's decree of June 5, 1881, and never after questioned until the Hamill case of 1888, *some 18 years* after the bonds were issued, sold and delivered, and that there

could have been no *bona fide* holding of these bonds in all of those 18 years.

The election of Nov. 30, 1868, was lawfully called and held and $200,000 voted as a subscription to the stock of the Shawneetown branch of the Illinois Central Railroad Co., under the Act incorporating that road.

Private Laws of Ills, 1865, vol. 2, p. 218-220.

This *was "an existing law" for such an election and subscription some five years before the Constitution of 1870 was effective.*

Then the Act of March 10, 1869, *expressly* gives legislative authority for combining, leasing and purchasing branch lines and connecting railroads with the St. Louis & Southeastern Railroad, and EXPRESSLY and IN EXPLICIT TERMS grants authority to the County of Hamilton to issue its $200,000 of bonds to the St. Louis and Southeastern Railroad Company, voted Nov. 3, 1868, to one of its branches or leased lines, the Shawneetown branch of the Illinois Central Railroad. This was a *then "existing law" more than a year before the adoption of the State Constitution of 1870.*

Seldom is legislative authority in such cases *more expressly and more explicitly given, and more faithfully executed than in this case.*

The above statements and dates, about which there can be no contention, show that there were existing laws for the vote at the time it was taken, and for the issue of the bonds

when they were issued, and that the law under which they were issued was not repugnant to the Constitution of 1870

The section of the Constitution of July 2, 1870, which counsel claims is violated by the issue of these bonds is found in Starr & Curtis' Annotated Statutes of Illinois, vol. I, p. 203, and is as follows:

"No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad, or private corporation, or make donation to, or loan its credit in aid of such corporation; *Provided, however,* that the adoption of this Article *shall not be construed as affecting the right of any such municipality to make such subscriptions,* WHERE THE SAME HAVE BEEN AUTHORIZED UNDER EXISTING LAWS, *by a vote of the people in such municipality prior to such adoption.*"

This issue of bonds and subscription unquestionably comes WITHIN *the proviso,* as the vote was had Nov. 3, 1868, under *then existing laws,* and the issue of the bonds is in no way affected by, or in violation of the Constitution of 1870.

We ask the special attention of this Honorable Court to the case of Pana vs. Bowler 107 U. S. 529, as *decisive* that the issue of the bonds in controversy is not in violation of the constitution of 1870, and on the question of the Amendatory Act of March 10, 1901, and the authority to issue bonds to the St. Louis & Southeastern Railroad Co. when the vote was to subscribe to the stock of the Shawneetown branch of the Illinois Central Railroad Co.

Also that the Hamill case 134, Illinois 666, was *not binding upon non-residents.*

Pana vs. Bowler, 107, U. S. 545.

For fuller statement of all facts referring to questions involved see Austin v. Hamilton Co. 22 C. C. A. 128.

For discussion of all other questions referred to in defendant's brief we refer to our original brief.

All of which is respectfully submitted,

George A. Sanders

Plaintiff's Attorney.